The Criminalization of Gender Affirming Healthcare

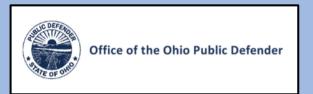
Office of the Ohio Public Defender 2022 Legal Summit



Simone Chriss, Director of the Transgender Rights Initiative

Director of the Transgender Rights Initiative

Southern Legal Counsel







Roadmap: Criminalizing Gender Affirming Healthcare

- (1) LGBTQ+ Cultural Competency 101
 - (2) Trends in the Criminalization of Gender-Affirming Healthcare
- (3) What We Can Learn From Florida



FLORIDA

Groups to sue Florida Medicaid program over ban on gender affirming care

Florida's ban will affect up to 9,000 of the state's Medicaid enrollees who are transgender.

A group of LGBTQ+ rights organizations, including the Southern Legal Counsel, Lambda Legal, the National Health Law Program, and the Florida Health Justice Project, filed the federal lawsuit against AHCA last week.



Simone Chriss. Credit: Transgender Rights Initiative, Southern Legal Counsel

On Monday, the legal groups asked the court to block AHCA's ban on gender-affirming care from being enforced until there's a trial on the merits of the rule.

Simone Chriss, director of the Transgender Rights Initiative at Southern Legal Counsel, said the legal teams filed the motion for a preliminary injunction asking for emergency relief "because each and every day that passes with this rule," – which went into effect Aug. 21 – "real people are being harmed" – just like K.F.

FOR IMMEDIATE RELEASE

Florida Families and Advocacy Groups Sue to Block the Florida Law Known as "Don't Say Gay"

(Orlando, FL, July 26, 2022) – Late yesterday, Southern Legal Counsel (SLC), Lambda Legal, the Southern Poverty Law Center (SPLC), and private counsel Baker McKenzie filed a federal lawsuit challenging the Florida enacted House Bill 1557, commonly referred to as the "Don't Say Gay" law.

The lawsuit argues that the law, which bans discussion of sexual orientation and gender identity in grades K-3 and restricts such discussions for students through grade 12 based on undefined standards of appropriateness, effectively silences and erases LGBTQ+ students and families. The law demands that school districts implement its terms, and it empowers any parent to directly

sue the

"Throu the wa learnin Simon a resul district policie avoid e correct enviror

SLC AND PARTNER LEGAL ORGANIZATIONS URGE COURT TO BLOCK FLORIDA LAW KNOWN AS "DON'T SAY GAY"

(Orlando, FL, August 26, 2022) – Today, Lambda Legal, Southern Legal Counsel (SLC), the Southern Poverty Law Center (SPLC), and private counsel Baker McKenzie urged a federal district court to halt implementation of enacted Florida House Bill 1557, commonly referred to as the "Don't Say Gay" law, which bans discussion of sexual orientation and gender identity in grades K-3 and restricts such discussions for students through grade 12 based on undefined standards of appropriateness. The law, which effectively silences and erases LGBTQ+ students and families that went into effect July 1, 2022, requires school districts to implement it and empowers any parent to directly sue the school district if they are dissatisfied with its implementation of the law. The legal advocates filed a lawsuit challenging the law on July 25, 2022.

"The blatantly unconstitutional law that we have asked the Court to block from enforcement is part of a targeted and strategic attack on the rights of LGBTQ+ Floridians," said Simone Chriss, director of the Transgender Rights Initiative at Southern Legal Counsel. "Each day that this law is permitted to remain in place, children are deprived of access to affirming learning environments and inclusive books, materials, supports, and policies that make school a safe space in which they can learn and grow."

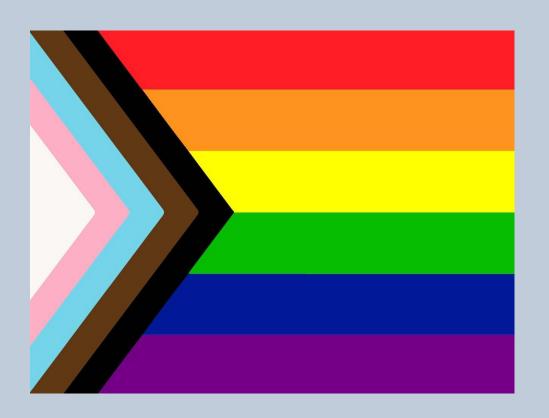
ADVOCATES URGE FLORIDA BOARD OF MEDICINE TO REJECT ANTI-TRANSGENDER HEALTH CARE GUIDANCE

Health and LGBTQ Legal Advocates condemn State Surgeon General request that is based on junk science and cites discredited experts.



"Southern Legal Counsel, Florida Health Justice Project, Lambda Legal, and National Health Law Program urge the Florida Board of Medicine to stop playing politics with people's health care and not to adopt guidelines for a standard of care to treat gender dysphoria that are contrary to the evidence-based and overwhelming consensus that gender-affirming medical care for the treatment of gender dysphoria is safe, effective, and medically necessary.

LGBTQ+ Cultural Competency 101



Cultural competence is a set of congruent behaviors, attitudes, practices, and policies that come together in a system, or among professionals, to enable effective work in cross-cultural situations.



Al-Mateen, et al., Diversity & Cultural Competency Curriculum for Child & Adolescent Psychiatry Training, Am. Acad. of Child & Adolescent Psychiatry (2011).

"Sex assigned at birth"
refers to the designation on
your birth certificate made
by a doctor (usually based
on visual assessment of
external genitalia)

Expression

"Gender identity" refers to your internal understanding of your gender. Everyone has a gender identity. It is durable and cannot be changed by social or medical intervention.



-Identity

'Gender expression" refers to the way that we express our gender to others, including through clothing, hair style, mannerisms, etc.

(--- Sex

"Sexual orientation" refers to who we are attracted to, including physically, emotionally, romantically, etc. Every individual's sex is **multifaceted** and comprised of many distinct biological characteristics, including, but not limited to, chromosomal makeup, hormones, internal and external reproductive organs, secondary sex characteristics, and gender identity.

Everyone has a gender identity!

A person's gender identity is a fundamental component of their identity that is durable and deeply rooted. It cannot be changed by social or medical intervention.

When a child is born, a sex designation usually occurs at birth based on a visual assessment of the infant's external genitalia. Most people are cisgender, meaning that their gender identity aligns with the sex they were assigned at birth.

Not everyone's gender identity aligns with the sex they are assigned at birth. A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.

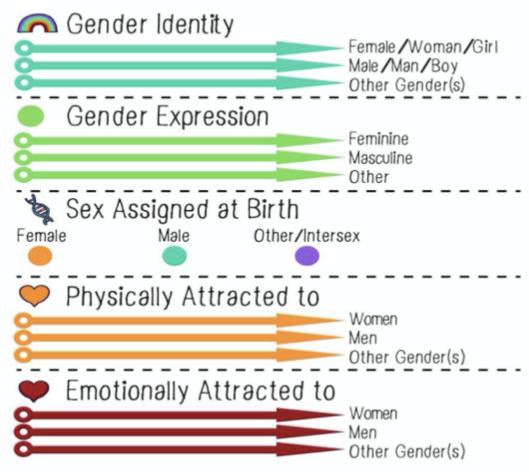
The Gender Unicorn





To learn more, go to: www.transstudent.org/gender

Design by Landyn Pan and Anna Moore



Transgender

- Transgender (trans) is an umbrella term used to describe people whose gender identity and/or gender expression differ from their sex assigned at birth.
- This term is an adjective using it as a verb (i.e. transgendered)
 or a noun (i.e. transgenders) is incorrect and should be avoided.
- TGNC is a common term used to describe the transgender and gender non-conforming community

Cisgender:

- People who are not transgender
- Refers to people whose sex assigned at birth corresponds to their gender identity
- Can be any sexual orientation

Gender non-conforming & non-binary

Gender Non-conforming is also a current term that is used to indicate someone who's biological sex is not congruent with their gender identity or gender expression.

Terms you may also hear: genderqueer, gender fluid, gender variant, etc.

Non-binary: One term used by individuals who do not feel that they fit into one of the two categories on the gender binary, male or female. Often use "they/them" pronouns. Some non-binary individuals also identify as transgender, but not all do.

Coming Out



The process of disclosing one's sexual orientation or gender identity to others.

Because most people in our society are presumed to be heterosexual and cisgender, coming out is not a one-time life event; it is a **lifelong process** that is continuously repeated.

Heterosexual and cisgender family members or allies of LGBT persons may also experience a coming out of their own, when and if they decide to disclose to others that they have friends or relatives who are LGBT.

Gender Dysphoria

- Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics). This is a formal diagnosis in the DSM-V.
 - Being transgender is not a disorder, rather the distress of dysphoria (i.e. levels of anxiety, depression, psychological distress etc. often accompanying being trans) can rise to the level of a diagnosable disorder for which treatment is available.
 - Diagnosis is not a license to stigmatize, discriminate, or deny civil rights.
- Only some transgender people experience gender dysphoria.
- Every major medical association in the United States agrees that medically necessary treatment for gender dysphoria is safe, necessary, and effective.

Transgender Youth

- According to the DSM-V, children typically begin expressing their gender identity between 2-4 years old.
- Even that young, trans children are often persistent and insistent about their gender, differentiating their behavior from a phase or imaginative play.
- To alleviate distress, medical experts and healthcare providers recommend that children "socially transition" to live consistently with their gender identity. APA Guidelines.
- Every major medical association in the United States agrees that medically necessary treatment for gender dysphoria is safe, necessary, and effective.
- Puberty deferment (hormone blockers) can be medically necessary for trans youth once they reach puberty.

Gender-Affirmation / Transition

The period of time in which a person begins to live in a gender role which is in accordance with their gender identity. This could include changes to clothing/appearances, using affirmed names/pronouns, starting medical treatments for gender affirmation, etc.

May occur only part-time, in cases where they might lose employment, be kicked out of home, etc.

Every path is different, everyone's goals are unique. Don't assume someone's transition goals.

The Ins and Outs

What is gender-affirmation / transition?

- Social transition
- Medical transition
- Legal transition

- Barriers and obstacles:
 - Emotional, financial, lack of resources, access to medical care, lack of support, physical characteristics, violence, etc.

Cisgender Privilege

- Use public restrooms without fear of verbal abuse, physical intimidation, or arrest.
- Use public facilities such as gym locker rooms and store changing rooms without stares, fear, or anxiety.
- Strangers don't assume they can ask you what your genitals look like and how you have sex.
- Your validity as a man/woman/human is not based on how much surgery you've had or how well you "pass" as non-transgender.
- (The legislature isn't constantly interfering with your basic human rights)

Heterosexual Privilege

- Kissing, hugging, or being affectionate in public without fear
- Raising children without the fear that they will face discrimination or rejection
- Receiving validation from your religious community
- Growing up with role models / people who were like you in the media

Pronouns matter.

 Transgender and non-binary youth who reported having pronouns respected by all or most people in their lives attempted suicide at half the rate of those who did not have their pronouns respected.



The Trevor Project. (2020). 2020 National Survey on LGBTQ Youth Mental Health. New York, New York: The Trevor Project

Intersection of Poverty

- 90% of transgender people experience harassment, discrimination, and mistreatment at work.
- 29% of the transgender population lives in poverty, 2x the national average.
- The unemployment rate among the transgender population is 15%, 3x national average.
- 40% of trans individuals have attempted suicide in their lifetime, 9x the national average (4.6%)
- Nearly one-third, 30%, of the transgender individuals report experiencing homelessness.

Transgender individuals suffer some of the most dramatic health disparities

- ▶33% of trans individuals reported a negative experience including verbal harassment and refusal of treatment
- ▶28% reported they did not see a physician when they needed to because they feared mistreatment
- ▶24% reported having to teach the provider about transgender people in order to receive appropriate
- ▶15% reported being asked invasive or unnecessary questions about being transgender not related to the reason for the visit
 - ■Trans folks were 3x more likely to have to travel more than 50 miles to receive gender-affirming care
 - ■Among individuals assigned female sex at birth, only 27% reported that they had a pap smear in the past year, compared to 43% in the U.S. adult population.

Transgender individuals suffer some of the most dramatic health disparities

- One major contributing factor to LGBTQ+ health disparities is a healthcare community which lacks a foundational understanding of the unique needs of this community due to a dearth of proper training in LGBTQ+ health during medical school and residency.
- The **median time** that medical students spend learning about LGBTQ+ health is **five hours**, and one-third of medical schools provide **no instruction** at all. ¹
- This lack of inclusive LGBTQ+ medical education leaves providers unprepared to provide affirming and inclusive care, contributes to significant disparities in health outcomes, and propagates implicit and explicit biases towards LGBTQ+ identifying patients. ²

¹ Obedin-Maliver J, Goldsmith ES, Stewart L, et al.: Lesbian, gay, bisexual, and transgender-related content in undergraduate medical education. JAMA 2011;306:971-977

² Fallin-Bennett K. Implicit Bias Against Sexual Minorities in Medicine: Cycles of Professional Influence and the Role of the Hidden Curriculum. Acad Med. 2015; 90:549-552.

SYSTEMS OF INEQUALITY:

POVERTY & HOMELESSNESS

Transgender and gender non-conforming people are much more likely to be poor or homeless than the average person. This diagram shows how various factors combine into an interlocking system that keeps many trans and gender non-conforming people in situations that are vulnerable and unequal.

Discrimination in hiring and workplace because few laws prohibit employment discrimination on the basis of gender identity; it's hard to find trans-aware legal assistance and it is difficult to prove discrimination

Unequal access to benefits because benefit applications require I.D., which may show an incorrect name or gender; if cut off from public assistance illegally, it's

hard to find trans-aware legal help

Drop out due to harrassment, violence, and/or discrimination at school: lack of supportive GED programs

Can't apply for school or access higher education due to lack of I.D. or because

their I.D. doesn't reflect their correct name or gender; school records often hard to update and correct

Barriers to Education Low Income No Income

Can't apply for jobs or access good employment due to lack of I.D. or because their I.D. doesn't reflect their correct name or gender

No access to healthcare:

trans people are often dented

all treatment or are afraid

to seek care due to past

mistreatment

Permanent housing is inaccessible due to housing discrimination in private housing market; low-income housing

options are often gendersegregated and trans people are rejected for placement

Homelessness or at Risk for Homelessness Inadequate or No Healthcare

Persistent and severe medical problems: transphobic violence leads to increased mental health and medical problems

Kicked out of home because of abuse from parents and foster parents; trans youth are not allowed to express their gender identity in gender-segregated group homes, are dented access to affirming clothing and support

Temporary housing is inaccessible due to frequent rejection from gendersegregated shelters, being placed into the wrong shelter, or facing harassment and abuse from other clients or untrained staff

Trans-specific physical and mental healthcare needs are often not provided or covered even if insured; shortage of knowledgeable healthcare professionals who can provide trans-specific care

Bias, discrimination, and ignorance in medicine: inappropriate and harmful treatment, including institutionalization, damaging, incompetent medical procedures, and common disregard of trans people's complaints

SYLVIA RIVERA

LAW PROJECT

147 W 24TH ST, 5TH FLOOR NEW YORK, NEW YORK, 10011 T. 212-337-8550 • F. 212-337-1972 WWW.SRLP.ORG

SYSTEMS OF INEQUALITY: CRIMINAL "IN"JUSTICE

This diagram illustrates how overpolicing and profiling of low-income people and of transgender and gender non-conforming people intersect, producing a far higher risk than average of imprisonment, police harrassment, and violence for low-income trans people.

False arrests for using the

Subject to profiling and harrassment; excessive police presence in poor communities; increased exposure to police

Charged with survival crimes (sex work, drugs, theft, etc.) due to lack of access to legalized employment or education

Charged with "Quality of Life" crimes like sleeping outside, turnstile jumping, loitering, etc., due to lack of resources (housing, money)

Subjected to increased isolation as an attempt to "solve" the problem of TGNC people's existence

Serving longer sentences due to both misconceptions of trans people during sentencing/trial and not being understood at parole Criminalization of Poor and Homeless People "wrong" bathroom
Criminalization

Trans People

False arrests for lack of proper identity documents (by ICE, police, etc.)

Trans women are often falsely arrested for soliciting just for being transgender

Trans masculine people of color often face increased profiling

Disproportionately High Exposure to Arrest, Police Harrassment, Incarceration, and Violence for Low-Income Trans People

Additional Gender-Related Harms Suffered by Trans People while in Custody of the Criminal Justice System Facing long-terms effects of being repeatedly disrepected via name calling, being called the wrong name/pronouns

Isolated and/or subjected to increased sexual violence, harrassment, and abuse at the hands of prisoners and corrections facility staff

Gender-segregated arrest procedures (searches, holding cells, policies and procedures, etc.) do not accomodate trans people; low-income trans people are especially targeted due to lack of access to health care that would help them "pass" as non-trans people and are commonly misclassified by arresting officers as "male" or "female" based on their appearance or whether they have had genital surgery

Denied access to hormones and other trans-specific health care while incarcerated and forced to change gendered characteristics of appearance in prison (made to cut hair, give up prosthetics, clothing); this results in mental anguish and increased exposure to harrassment and violence because appearance may conform even less to gender identity

SYLVIA RIVERA (

LAW PROJECT

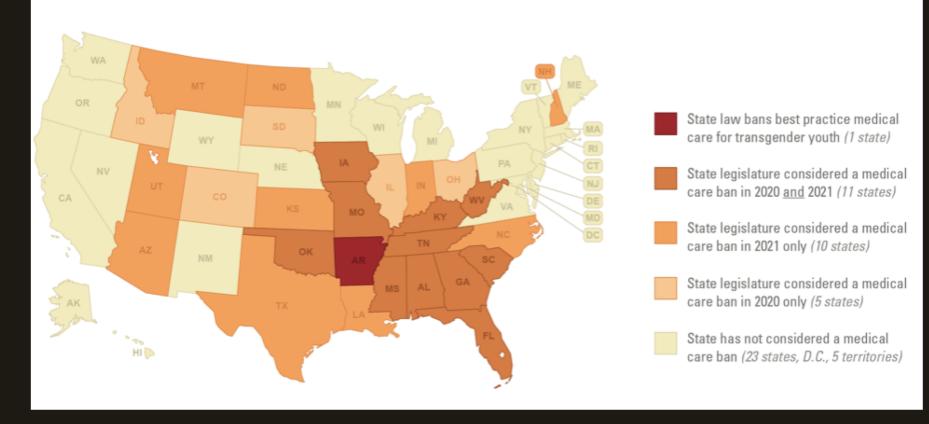
147 W 24TH ST, 5TH FLOOR NEW YORK, NEW YORK, 10011 T. 212-337-8550 • F. 212-337-1972 WWW.SRLP.OR

Trends in the Criminalization of Gender-Affirming Healthcare



Recent Trends in the Criminalization of Transgender Healthcare

Over Half of States Have Considered Banning Best Practice Medical Care for Transgender Youth
States that considered (or passed) a medical care ban in 2020, 2021, or both



Recent Trends in the Banning of Coverage for Transgender Healthcare

PRIVATE INSURANCE

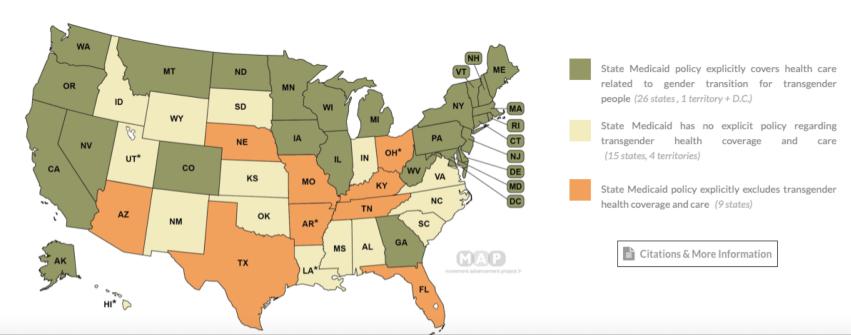
MEDICAL CARE BANS

MEDICAID

STATE EMPLOYEE BENEFITS

TABLE FORMAT

State Medicaid policies reflect varying interpretations of federal regulations that prohibit discrimination based on gender identity. Some state policies explicitly say that the state's Medicaid program covers medically necessary care for transgender people, whereas other state policies explicitly exclude such care. Still other states have no explicit policy either way. Importantly, even in states without an explicit policy, transgender people may still be able to access transgender-inclusive coverage or benefits. However, when states have no explicit policy, transgender people are more likely to report obstacles to receiving care, including being denied needed care.



Proposed Legislation Would Criminalize Healthcare Providers—And Sometimes Parents— for Providing Best Practice Medical Care to Transgender Youth Examples of Penalties Under Legislation Proposed in 2021

| | Charging Healthcare Providers with a Crime, Including Felony | Revoking Professional License or other Disciplinary Actions | Charging Healthcare Providers with Fines or Civil Penalties | Creating a Civil Action, Allowing Individuals to Sue Medical Providers | Consequences for Parents, Including Being Charged With Criminal Child Abuse |
|----------------|--|---|---|--|---|
| | | | -\$ (-\$) | | |
| Alabama | Ø | | | | Ø |
| Arkansas | Ø | Ø | | Ø | |
| Arizona | Ø | | | | |
| Florida | Ø | | | | |
| Georgia | Ø | Ø | | | |
| lowa | | Ø | Ø | Ø | |
| Indiana | Ø | Ø | | Ø | |
| Kansas | Ø | | | | |
| Kentucky | | Ø | | Ø | |
| Louisiana | Ø | | Ø | Ø | |
| Missouri | | Ø | | | Ø |
| Mississippi | | O | Ø | | |
| Montana | | Ø | Ø | Ø | |
| North Carolina | | Ø | Ø | Ø | |
| New Hampshire | | | | | Ø |
| Oklahoma | Ø | Ø | Ø | | |
| South Carolina | Ø | | | | Ø |
| Tennessee | Ø | Ø | | Ø | Ø |
| Texas | Ø | Ø | | | Ø |
| Utah | | Ø | | | |
| West Virginia | Ø | | Ø | | |

Research shows that trans youth with supportive families experience:

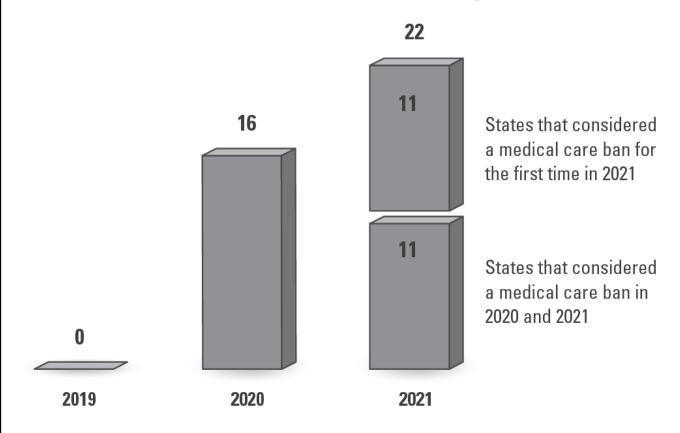
52% decrease in recent suicidal thoughts

46% decrease in suicide attempts

Significant increases in self-esteem and general health

Source: Ryan et al. 2010. "Family Acceptance in Adolescence and the Health of LGBT Young Adults." Journal of Child and Adolescent Psychiatric Nursina 23(4): 205-213.

A Growing Number of States are Considering Banning Best Practice Medical Care for Transgender Youth



Source: Based on the Equality Federation's "Equality Tracker" for 2020 and 2021 state legislative sessions. Data as of 4/15/2021.



The Health and Wellbeing of More Than 64,700 Transgender Youth Are at Risk: States Considering Harmful Bills Banning Access to Health Care for Transgender Youth

Number of transgender youth (ages 13-17) in each state considering a medical care ban in 2021



Note: This is a minimum estimate of the number of transgender youth who would be affected by these bills, for at least two reasons. Transgender youth under the age of 13 would also be impacted by these bills, but reliable data about the number of transgender youth is currently only available for those ages 13-17. Additionally, some states' bills extend the definition of "minor" to those under 19 or under 21, expanding the harm to even more transgender young people.

Source: States that are considering or have considered bans on best practice medical care for transgender youth in 2021 from the Equality Federation's "Equality Tracker." Map current as of April 15, 2021. Population estimates of transgender youth (ages 13-17) from Herman et al's (2017) <u>Age of Individuals Who Identify as Transgender in the United States</u>, based on data from the Centers for Disease Control and Prevention (CDC).



Nationwide Trends

Arkansas passes bill to ban gender-affirming care for trans youth

First state in the country to ban gender-affirming health care for transgender minors; then Tennessee, Arizona, and Alabama enacted, and 11 other states introduced, similar bans.

Alabama's ban included the harshest penalties thus far, making the provision of genderaffirming care a felony punishable by up to 10 years in prison.

Alabama ban on gender-affirming care for transgender youth takes effect

The legislation makes it a crime punishable by up to 10 years in prison to provide puberty blockers, hormones and medical procedures to trans youth under 19.

Texas governor calls to label gender- affirming care for trans kids as 'child abuse'

Governor of Texas issued an order classifying the provision of gender-affirming care as "child abuse" and requiring investigations of providers and parents who provide or seek out such care for minors.

Arizona lawmakers pass bill outlawing gender-affirming treatment for trans youth

Nationwide Trends

There were more than 250 anti-LGBTQ+ bills introduced in the first half of 2022. Some of these bills carry severe penalties for health care providers, and sometimes parents, who provide or seek out gender-affirming care for minors.

- States with bills that would make it a <u>felony</u> for health care providers to provide gender-affirming care to minors:
 - 7 states: Alabama, Arizona, Georgia, Idaho, Kansas, Oklahoma, and South Carolina
 - (1 state, Tennessee, would make it a misdemeanor)
- States with bills that would subject healthcare providers who provide genderaffirming care to minors to discipline from state licensing boards (including revoking or suspending medical licenses):
 - 12 states: Arizona, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Missouri, North Carolina, Ohio, Oklahoma, and Tennessee

Nationwide Trends

There were more than 250 anti-LGBTQ+ bills introduced in the first half of 2022. Some of these bills carry severe penalties for health care providers, and sometimes parents, who provide or seek out gender-affirming care for minors.

- States will bills that would allow individuals to *file civil lawsuits for damages* against medical providers who violate these laws:
 - 10 states: Arizona, Georgia, Iowa, Kentucky, Louisiana, Missouri, North Carolina, Ohio, Oklahoma, and Tennessee.

- States with bills that would <u>penalize parents</u> who allow their minors child to obtain gender-affirming medical care:
 - 9 states: Alabama, Idaho, Kansas, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. (Missouri and Texas classify gender-affirming care as *child abuse*)

Oklahoma

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 676 By: Hamilton

AS INTRODUCED

An Act relating to crime and punishment; making certain medical treatment unlawful; providing definition; providing for certain penalty; providing for codification; and providing an effective date.

| 17 | E. Any person guilty of the provisions of subsection A, B or C | | | |
|----|--|--|--|--|
| 18 | shall be guilty of a felony punishable by imprisonment in the | | | |
| 19 | custody of the Department of Corrections for a term of not less than | | | |
| 20 | three (3) years nor more than life and a fine of not more than | | | |
| 21 | Twenty Thousand Dollars (\$20,000.00). | | | |
| 22 | SECTION 2. This act shall become effective November 1, 2021. | | | |

Kansas

Session of 2021

HOUSE BILL No. 2210

By Representatives Fairchild, Garber, Helmer and Rhiley

2-3

AN ACT concerning crimes, punishment and criminal procedure; creating

the crime of unlawful gender reassignment service; providing grounds for unprofessional conduct for healing arts licensees; amending K.S.A.

| | | 2007 and repeating the entiting rection. |
|----|---------|--|
| | | |
| 19 | (4) | prescribing, dispensing, administering or otherwise supplying the |
| 20 | followi | ng medications: |
| 21 | (A) | Puberty-blocking medication to stop normal puberty; |
| 22 | (B) | supraphysiologic doses of testosterone to females; or |
| 23 | (C) | supraphysiologic doses of estrogen to males; or |
| 24 | (5) | removing any otherwise healthy or nondiseased body part or |
| 25 | tissue. | |
| 26 | (b) | Unlawful gender reassignment service is a severity level 8, person |
| 27 | felony. | |

65-2837 and repealing the existing section

Idaho

LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature Second Regular Session - 2022

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 675

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO GENITAL MUTILATION OF A CHILD; AMENDING SECTION 18-1506B, IDAHO CODE, TO PROVIDE FOR THE CRIME OF GENITAL MUTILATION IN CERTAIN INSTANCES, TO PROVIDE CERTAIN EXEMPTIONS, AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

- The Idaho bill would amend the state's statute prohibiting genital mutilation to
 <u>make it a felony to provide gender-affirming health care</u>, such as puberty blockers,
 hormone therapy and sex reassignment surgeries.
- The bill goes further, including that <u>a parent or guardian would also be guilty of a felony if they travel with their child to another state for the purpose of obtaining gender-affirming health care</u>.
- Those found guilty could face up to life imprisonment.

The Texas Ban Helps Illuminate the Connection to Reproductive Rights

As a basis for the ban on gender-affirming healthcare and the mandate that providers and parents be investigated by child welfare for child abuse:

"These violations have been found to infringe upon the <u>fundamental human right to procreate</u>. Any discussion...must consider the fundamental right that is at stake: <u>the right to procreate</u>. Given the uniquely vulnerable nature of children...it is important to emphasize the crux of the question...whether facilitating (parents/counselors) or conducting (doctors) medical procedures and treatments that could <u>permanently deprive</u> <u>minor children of their constitutional right to procreate, or impair their ability to procreate</u>, before those children have the legal capacity to consent to those procedures and treatments, constitutes child abuse."

Infringing upon the rights of the individual to bodily autonomy as well as upon the fundamental rights of parents to determine appropriate medical care for their child:

"Texas law generally recognizes a <u>parent's right to consent to a child's medical care</u>. TEX. FAM. CODE § 151.001(a)(6) ...But this general right to consent to certain medically necessary procedures does not extend to elective (not medically necessary) procedures and treatments that <u>infringe upon a minor child's constitutional</u> <u>right to procreate</u>. Indeed, courts have analyzed the imposition of unnecessary medical procedures upon children in similar circumstances in the past to determine whether doing so constitutes child abuse."

Penalties attach to failure to report "child abuse" and have a broad reach:

"It is important to note that <u>anyone who has "a reasonable cause to believe</u> that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person <u>shall immediately make a report</u>" ...The term <u>includes teachers</u>, nurses, doctors, <u>day-care employees</u>, employees of a clinic or health care facility that provides reproductive services, <u>juvenile probation officers</u>, and <u>juvenile detention or correctional</u> <u>officers</u>. Id. A <u>failure to report under these circumstances is a criminal offense</u>. TEX. FAM. CODE § 261.109(a)."

What About Ohio?

As Introduced

134th General Assembly Regular Session 2021-2022

H. B. No. 454

Representatives Click, Grendell

Cosponsors: Representatives Kick, Merrin, Young, B., Young, T., Creech, John, Bird, Powell, Fowler Arthur, Hall, Holmes, Zeltwanger, Wiggam, Ferguson, Dean, Koehler, Johnson, McClain, Gross, Jordan, Loychik, Hoops, Stoltzfus

A BILL

| То | enact sections 3129.01, 3129.02, 3129.03, | 1 |
|----|---|---|
| | 3129.04, 3129.05, 3129.06, 3129.07, and 3129.08 | 2 |
| | of the Revised Code to prohibit certain | 3 |
| | procedures to alter a minor child's sex and to | 4 |
| | designate this act as the Save Adolescents from | 5 |
| | Experimentation (SAFE) Act | 6 |

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Ohio's "Save Adolescents from Experimentation (SAFE) Act"

- Sec. 3129.04. No physician or other medical health care professional shall provide gender transition procedures to any person under eighteen years of age (including blockers/hormones)
- No physician, mental health provider, or other medical health care professional <u>shall refer any</u> <u>person</u> under eighteen years of age to any medical doctor for gender transition procedures.
- **Sec. 3129.05.** No nurse, counselor, teacher, principal, or other official or staff at a public or private school shall do either of the following:
 - (B) Withhold from a minor's parent or legal guardian information related to <u>the minor's perception</u> that his or her gender is inconsistent with his or her sex.
- Sec. 3129.06. (A) No public funds shall be directly or indirectly used, granted, paid, or distributed
 to <u>any entity, organization, or individual</u> that provides gender transition procedures to any
 minor.
- Sec. 3129.08. (A) Any provision of gender transition procedures to a person under eighteen years of age shall be considered unprofessional conduct and shall be <u>subject to discipline by the</u> <u>licensing entity</u> with jurisdiction over the physician, mental health provider, or other medical health care professional.
- **(B)** A person may assert an <u>actual or threatened violation</u> of this chapter as a claim or defense in a judicial or administrative proceeding and <u>obtain compensatory damages</u>, injunctive relief, declaratory relief, or any other appropriate relief...
- ...and a prevailing party who establishes a violation of this chapter <u>shall be entitled to recover</u> <u>reasonable attorneys' fees</u>.

Fortunately, for now...

COLUMBUS

Ohio lawmakers delay bill banning gender-affirming care for LGBTQ+ youth

by: <u>David Rees</u>, <u>Natalie Fahmy</u> Posted: Nov 29, 2022 / 02:55 PM EST Updated: Nov 29, 2022 / 03:31 PM EST

FEDERAL COURT BLOCKS ARKANSAS BAN ON GENDER-AFFIRMING CARE FOR TRANS YOUTH FROM MOVING FORWARD

Judge blocks Alabama's felony ban on transgender medication for minors

A Texas judge blocks the state from investigating parents of transgender youth

March 11, 2022 · 7:47 PM ET

Eighth Circuit Upholds Preliminary Injunction Against Arkansas Ban on Gender-Affirming Healthcare for Minors

September 2, 2022

Step 1: August 2022

Florida Medicaid enacts ban on coverage for gender-affirming care

Nicole Pasia | Aug 26, 2022 | Florida

POLITICS

Florida Board of Medicine bans gender-affirming care for minors



Step 2: November 2022

Step 3: Upcoming 2023

FLORIDA

Florida Republican pledges to make gender transition-related medical care for minors felony child abuse

Florida's 2023 session is currently some 11 months away. Fine's term — along with Florida's 160 legislative seats — are up for election in November.

The Claims to Challenge Laws and Policies Criminalizing or Banning Gender-Affirming Healthcare:

- ➤ Due Process Clause of the 14th Amendment to the U.S. Constitution
- > Equal Protection Clause of the 14th Amendment to the U.S. Constitution
- Void for Vagueness
- First Amendment Freedom of Speech
- Preemption (Affordable Care Act Section 1557)

The Legal Holdings:

- ➤ Patient Plaintiffs (minors) and Physician Plaintiffs <u>likely to succeed</u> on merits of **Equal Protection claims** (Alabama and Arkansas)
- ➤ Parent Plaintiffs <u>likely to succeed</u> on their **Due Process claims** (Alabama and Arkansas)
- ➤ All Plaintiffs <u>likely to succeed</u> on merits of **First Amendment claims** because Act is content and viewpoint based regulation (Arkansas)

What can you do if these laws and policies come to your state?

SPEAK OUT! ORGANIZE! EDUCATE!

If you are interested in learning more about the litigation challenging these discriminatory laws and policies, the following cases provide a good overview:

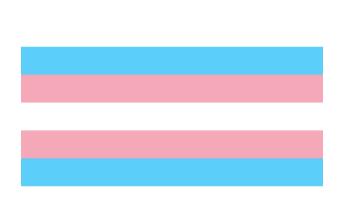
- Eknes-Tucker v. Marshall, 2022 WL 1521889 (M.D. Ala. May 13, 2022)
- Doe v. Abbott, No. D-1-GN-22-0009977, 2022 WL 831383 (Tex. Dist. Mar. 11, 2022); Abbott v. Doe, No. 03-22-00126-CV, 2022 WL 837956 (Tex. App. Mar. 21, 2022); mandamus conditionally granted sub nom.; In Re Abbott, 645 S.W.3d 276 (Tex. 2022).
- Brandt v. Rutledge, 551 F.Supp.3d 882 (E.D. Ark. 2021), aff'd sub nom.
 Brandt by and through Brandt v. Rutledge, 47 F.4th 661 (8th Cir. 2022)

A closer look at the 8th Circuit case in Arkansas, *Brandt v. Rutledge*:

- Arkansas Legislature enacted the "Arkansas Save Adolescents from Experimental Treatment (SAFE) Act"
- The Act prohibits healthcare providers from providing gender-affirming care to any individual under 18, and also bans *referring a patient* for gender-affirming treatment
- The claims:
 - Minor Plaintiffs and Provider Plaintiffs alleged the Act violates the Equal Protection
 Clause because it discriminates against them on the basis of sex and transgender
 status (i.e. a minor whose sex assigned at birth is male can be prescribed
 testosterone or have breast tissue removed for any medically necessary reason, but
 a minor whose sex assigned at birth is female cannot obtain that same medically
 necessary treatment because the minor's sex assigned at birth determines
 whether or not the minor can receive certain medical are under the law it
 discriminates based on sex)
 - Parent Plaintiffs alleged that the Act violates the Due Process Clause by limiting their fundamental right to seek and follow medical advice for their children.
 - All Plaintiffs alleged that the Act violates the First Amendment by banning referrals, thus limiting what Physician Plaintiffs can say and what Minor and Parent Plaintiffs can hear.
- Eighth Circuit Court of Appeals affirmed District Court's ruling in favor of Plaintiffs

Best Practices

- Introduce yourself with your pronouns
- Demonstrate inclusivity
- Inclusive intake forms (use affirmed name only)
- Avoid gendered greetings (Ms. and Mr., sir and ma'am, etc.) and opt for inclusive non-gendered terms (caller, client, student, parent, etc.)
- Welcoming office (or zoom) environment
- Inclusive/affirming language demonstrates allyship and creates a safe space, but language can also do the opposite.









QUESTIONS?





ACCESS • JUSTICE • IMPACT

SLC is a Florida statewide not-for-profit legal and policy advocacy organization that is committed to the ideal of equal justice for all and the attainment of basic human and civil rights.

Simone Chriss Director of Transgender Rights Initiative Southern Legal Counsel

simone.chriss@southernlegal.org

Located at 1229 NW 12th Ave. Gainesville, Fl. 32601 Our office can be reached at (352) 271-8890